

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2655 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BABUJI VERSIJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for the Petitioner.
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 9.1.2004, by
which he is detained as a 'bootlegger' under the

provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, he is also served with the grounds of detention. In the said grounds, there is a reference about one criminal case against the petitioner. The said case is registered under the Bombay Prohibition Act, on the ground that the petitioner is dealing in foreign liquor. After considering the said case and after considering the statements of some secret witnesses, the State Government has detained the petitioner under PASA.

It is submitted by the learned Advocate for the petitioner that, at the time of passing the detention order, the petitioner was in judicial custody in connection with the criminal case. In spite of the said fact, the detaining authority has mentioned that the petitioner will continue his activity after getting the bail. To substantiate the point that the subjective satisfaction of the detaining authority is vitiated, the learned Advocate for the petitioner has relied upon the decision of the Apex Court in *Amritlal & Others v. Union Government and others*, AIR 2000 SC 3675, wherein the Apex Court held as under :-

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4. In *Agustin's decision* (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh v. District Magistrate, Dhanbad*, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated

against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... .."

Considering the aforesaid fact that the Authority has not properly explained as to on what basis it has reached conclusion that the petitioner will continue his alleged illegal activity after getting the bail, the petition is required to be allowed on that point alone.

At this stage, the learned Advocate for the petitioner voluntarily submitted that the petitioner will not enter Naroda Police Station area upto 31st October, 2004. This voluntary statement is recorded. The concerned Police Officer of the Naroda Police Station will monitor this aspect, to see that the petitioner is

not permitted to enter Naroda Police Station area upto 31st October, 2004, as per the statement made by the learned Advocate for the petitioner voluntarily after getting instructions from the petitioner.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

20th July, 2004 (P.B. Majmudar, J.)

(apj)